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TRANSCRIPT OF MEDIA ROUNDTABLE WITH DHS UNDER SECRETARY ASA HUTCHINSON

Transcript of a media roundtable with DHS Under Secretary Asa Hutchinson concerning the Computer-Assisted Passenger Prescreening System.

(WASHINGTON, DC) Feb. 12, 2004 -- **UNDER SECRETARY HUTCHINSON:** Thank you very much, I know there are a whole host of things that are going on, on the Hill and here in Washington and it's a long ways out here but thank you for coming out here today and giving us this opportunity to give an update on the CAPPS II and a brief comment on the GAO report that I understand is being released today. Then I will certainly have time for comments.

First, I would emphasize that this CAPPS II system is being developed in response to a Congressional Mandate. This is not an idea that was pulled out of the sky this was something that Congress mandated in response to the attack on America that emphasized the need for a passenger screening system that would effectively screen for terrorists and determine who should be referred to secondary inspection. Congress did not give us a particular time line in that Mandate. They simply said that this is something that must be done. We have taken on that project and responsibility that Congress has given to us.

The second thing that I want to emphasize is that the CAPPS II, the passenger screening system, will not be implemented until it has undergone a rigorous and complete testing to demonstrate its effectiveness, secondly that it has the capability of properly protecting passenger information and thirdly system capability.

The GAO report that came out emphasized that the CAPPS II system is not in a position to be fully implemented, that we're not as far along as was expected in terms of testing and all of the concerns that were expressed by GAO were really in reference to the fact that we've not been able to successfully test the system that, as they pointed out, the testing the system requires the capability and have data to test. So I don't look at the GAO report as, really,

shedding any unusual light on the present circumstance other than the fact that we have not been able to test the system yet. We do believe that the GAO report has really given us an incomplete grade until we can fulfill our responsibility for testing.

I do think the GAO report, also failed to recognize international progress that has been made in the area of receiving data for testing purposes. We have been very successful and worked very hard in working with European Commission on receiving a preliminary agreement that we would have the transfer of PNR Data that would include an ability to test for the CAPPs II system and that has not been finalized yet and still has to be approved but we've made enormous strides in being able to utilize the European data for that purpose. But we do not intend to simply to rely upon that in our testing protocol we want to be able to use domestic data as well to have a fair test and one that is more comprehensive and also sensitive to the Europeans concerns as well.

I would emphasize that we believe a public discussion is helpful as we consider the implementation and the testing of the CAPPs II system, we welcome that, and as part of that view we have given the public, I believe, two opportunities to comment thus far. We intend to issue a new notice of proposed rule making in the future and at such point as we look toward the final regulations for the implementation of CAPPs II assuming that the testing moves along in a successful fashion and so we expect additional opportunities for the public to comment as well as different groups that are interested in what we are doing.

Finally, before I turn it open, I would tell you today that we intend to establish an external review board that will have the responsibility of making sure and overseeing that the privacy notice is being followed and that the appeal process is working effectively and that the passenger information is adequately protected and so that I think that the establishment of such an external review board will be helpful in giving us additional guidance, comment, feedback as an on-going process in the future as CAPPs II will be utilized in additional to passenger screening. So, with those comments let me turn it over for questions.

Q: I have a letter here from Fritz Bolkestein to the Secretary, to Secretary Ridge, in which it says that Europe has not agreed to submit its data for CAPPs II testing. Then it also reminds you that because there is no situation that use of this could leave airlines open to law suits and the same problems that are here, if its used. Also, just a few days ago another report came out from the European Union, which also recommends that in no way that PNR Data should be used for CAPPs II testing, at all, especially given that the GAO report was not out yet. So I am confused where the agreement exists to test and have the European data used for testing.

Hutchinson: First of all any agreement that is reached has to be approved by the European Parliament and so that is really the status of it and I think that reflects Commissioner Bolkestein's language that there has not been final approval for that purpose because it has not been finalized in final agreement form and it has not been approved by European Parliament. What I have referenced is that we have had negotiations that have been on going for months and that we have reached agreement, oral understanding, this has been communicated by Commissioner Bolkestein as well for the submission of this agreement to the European Parliament and part of that agreement that has been breached with Commissioner Bolkestein, in these negotiations, is that the PNR Data would be able to be

used for testing purposes of CAPPS II with the understanding that the system would not be used for fully implementing CAPPS II system until the Congressional review is completed and the European Commission has an opportunity to review the results of the testing. So that's where we stand with them, now, underlining all of that is our independent decision that we're not going to try to move forward with the testing of this system with European data because of the state of the plague there and because we think of more effective approach would lead to test it with data we have here domestically so we have a very straight forward testing system.

Q: You mean with no testing with European data you mean none at all or you mean none with just European data?

Hutchinson: This is where it gets a little bit complex. It would certainly not be done just with European data. Whenever we get data from domestic airlines many times we'll have a European link to the itinerary and so you cannot even test domestic flights without some data from European passengers being involved but the source that we would look to for the testing of CAPPS II would be the domestic airlines and there flights.

Q: Obviously they're not willing to give out that data at this time and the report talks about that as well so where do you stand on compelling the airlines, first of all, and secondly can you also talk about time frames because the report indicates that clearly you're behind and they don't think you're going to be able make those deadline that you had publicly set yourself but first about compelling the airlines for the data.

Hutchinson: In reference to the airlines, you think through it and you sort of have to know where we have to be and the airlines for understandable reasons are not going to voluntarily provide the data to the government nor would we ask them to do it on a voluntary basis, we think that puts them in an unfair position and a difficult position, we would not ask that of them. They have an obligation to there passengers and they've had some highly publicized incidents that caused them some embarrassment so they're not going to volunteer it and we're not going to ask them to volunteer it, so the only other means to receive that is by some type of rule making or security directive that would compel the sharing of that data and that's where we are analyzing exactly the right route for that to go but that's in a broad context what we will have to do and that's where I emphasize, again, we want to provide another opportunity for the public to comment and there would be a public notice that would go out probably not in reference to getting that data but another opportunity to comment on the overall system.

Q: But that sounds like such a long process. I mean maybe a security directive wouldn't be but the rule making certainly is. So I guess the question is do you have any sense as to when you might be ready to go to the airlines with something that's says "ok you need to give us this data so we can begin some testing"?

Hutchinson: First of all there is not any specific time line that I would give you that would lead us to a time that this would be ultimately implemented and so I will steer you away from a timeline and I think that a necessary part of that it's probably fair to say that because of the obstacles with moving forward with testing some of the original timelines very well will have to be adjusted.

Q: But it is it fair to say that right now you really don't know when you will be able to begin testing the system?

Hutchinson: That's is a fair statement I know in my mind and I have timed it out as to when I think we can do it but I you know there are a number of steps that we have to go through to get that and so, no, I don't think I can give you that timeline and I would just caution you at this point that we are committed to having a full testing. This is a pen and pad so let me speak very frankly with you that they were some very ambitious, aggressive moving forward with this program at an operational level. You know we're there to take steps to make sure that we have the right policy overview, we review the right timeline and as we get closer to moving forward we say we failed to realize that this rules got to be submitted to OMB, there's going to be this time, there's going to be all of these processes involved, and for example the testing, if we do it, for 30 days in this timeframe you don't roll it out the next week. We want to have an opportunity to evaluate that testing and to assess it. So you need time for this as well and so we've had to back with that and to make some adjustments to the timelines we were given and so at this point I would not give you a timeline that we're going to roll this out. In testing I think I know when we will probably be able to get that done but I can't give you that right now.

Q: Do you think you'll be able to start it by the end of the year?

Hutchinson: Absolutely, I certainly hope that is the case.

Q: You mean...start what, testing?

Hutchinson: Testing, I take the question as testing, yes it is very important we test the system and we have the platform developed there, it's ready to go, it needs to be tested, you don't want to wait six, nine months to do the testing. We're certainly not slowing down our efforts to get to the point where we can test the data. For example, one issue is if you want to gather the data do you test it in real time or do you test it in historical context? I guess that we will test it historically and if you want to test it historical data you have to give the airlines notice to collect the data and get it in the position to transfer it so you have to give them adequate notice to do this for that time frame in the future you can't say that you're going to collect it for information last December because it has already been done. So all of that gives us some time constraints, some additional time figures that have to be added in.

Q: Just so we're clear, we were given, just a month ago, some roll out figures for early summer or summer. Is that kind of the amount of time for the operatives?

Hutchinson: In fairness to myself, I'm not sure I said that.

Q: No, not you directly.

Hutchinson: If you didn't hear it from me...I think I gave some references to test this spring, I think, is the only timeline that I gave and I will tell you now that, that timeline for testing probably will not be in a spring timeframe. Depends on how you define spring but I never intended with that reference to spring to be when we would actually be rolling out the

system and with my comments about testing and an evaluation of it I think I certainly would not want to speak to any roll out time frame after that.

Q: Can I just clarify an issue that you hit upon a little earlier, in talking about using data from overseas carriers in your testing; it would use data the US carriers on overseas flights?

Hutchinson: That is still subject to specificity in the directive to collect the data but I would expect so, I mean, it makes sense to me, I think you want a full test and that is really hard to separate that linkage actually because many of the flights originate overseas and continue on in domestic legs so I think you would perceive that, that would be a very comprehensive test of the domestic airlines.

Q: I don't know if you got any reaction from the European Union on that type of data.

Hutchinson: I wouldn't want to speak for them I will leave that alone.

Q: Could you some up the effects of not being able to do the testing a put CAPPs II into effect this year and obviously some time into next year. It is less efficient, less security, what does it mean that we cannot get the system up a running or up and running promptly?

Hutchinson: I couldn't even conceive the timeline you're referencing.

Q: You said you hope to start testing by the end of the year, and you will have a testing period of some weeks, some month, an evaluation period, submit a rule to OMB, get that back, you know, we will be well into the Dean Administration.

Hutchinson: No, I certainly won't exceed that timeline. We gamed it out about how we can get there and ya'll can do that as well...

Q: Give us the benefit of your gaming.

Hutchinson: The message I think is that we have not slowed down our level of effort in moving forward with testing of the CAPPs system and I don't want to misconstrue that our commitment there, the investment in the system, the mandate by Congress we will not serve the public well if we slowed down for what ever reason our effort to test the system. So that's what we're moving forward very aggressively on. Once that's done we will evaluate it but I hope it is successful and we can move toward implementation but you all can figure out the steps I just don't want to get to constrained about what is going to happen in these timelines.

Q: Let me go back to the entire question. Why is it a problem that you cannot get this system up and running, or getting the system up and running is delayed?

Hutchinson: I like the other question better, you know, which is why is it important? It's important for the safety and the convenience of the traveling public. Our system right now is not effective and it results in too many people being referred to secondary screening. It does not give us a capability of having fewer people move forward, developing a registered traveler initiative, so it is important from that stand point moving from 14% secondary

inspections down to somewhere around 4%. Then the safety factor that we believe, and you can identify resources or at least factors that might indicate some risk and that might would make a safer system it also gives capability to have more robust review of government terrorist types of watch lists. So a number of safety factors that go in there as well as the convenience of the traveling public so, it is a matter of putting in a more effective system that gives us greater capability.

Q: The GAO report says here that the initial operating capabilities point at which the system will be ready to operate at one airline was originally scheduled to be ready in November 2003. Is there any way to stay with that do you think? The GAO report suggests that that is not going to be possible. It says the new completion date is unknown.

Hutchinson: That was the completion date for one airline in November 2003?

Q: Yes sir. So you're clearly not going to be able to make that. Is it now possible that the one airline testing date is going to be possible at all this year?

Hutchinson: I think that has reference to some initial discussions that...

Q: I don't mean testing, I mean operational one airline. Is it possible that it will be operational with one airline this year?

Hutchinson: Absolutely, it is possible that we would be able to phase it in and have some aspect of it operational this year. It is not guaranteed that it is going to happen but it certainly is conceivable and you could timeline this out that we do the testing, the evaluation and then you move into a prototype and you roll it out airline by airline whoever is the most ready. Sure by the end of the year that could happen, it might not happen but it could happen.

Q: Tell us a little bit about the advisory board can you tell us the specific people that will be on it, what sort of people will be on it, from what fields?

Hutchinson: Yes, we certainly will have internal review and policy and operation our internal assessments the GAO actually referenced. We also want to have the external review board that would include some representation from the privacy community, perhaps some representation from the airlines, the broad spectrum of representation on there of different people will be there that have interest in this type of a system. Consumers, privacy, industry and it very well can be another governmental department. The specifics of that is not yet been elaborated but that's the type of person or group that we would want to be on the external review board, again, assuring that our privacy commitments are met. Passenger information is protected, that the appeal process for the passengers that might be wrongly referred to secondary screening those issues are address.

Q: Can I ask you one other thing about what the report says because I'm not even sure what it means. Is says, "TSA also has not yet established a complete plan identifying specific system functionality that will be delivered." What does that mean to you? Are they trying to say that no one knows how this thing will work? Is that what they are trying to say?

Hutchinson: No, what they are looking at is design for the ultimate product five years from now. The complete functionality of a CAPPS II system and they discuss it in those terms. What we look at is, we want to know what the functionality will be in the first six months when we roll this out, obviously there are going to be adjustments, there's going to be other capabilities, or other utilizations of the platform that we can look at so that is something that is developed over time, so I think there is a disconnect with GAO and the standard evaluation of a new program that is rolled out. They made the same comment routinely on US-VISIT. Show us where this is going to in five years and where is the "end vision" as they like to use. Well, we can't tell you the end vision because we don't have all the policy decisions to give to everybody but I can tell you where it is going to be on January five, we did and rolled it out and I think the same type of nervousness of a system that costs money, that's impacts individuals and so they gave us some very close scrutiny. Uh, sir.

Q: I hate to keep going back to this but the timeframe... in the past TSA has said June, of this year, the whole thing would be complete so given that they have given this pass timeline can't you be more specific in saying probably not complete this year, probably complete next year just to define it a little bit better?

Hutchinson: I think we should just take it a step at a time and the testing. We are going to move forward with testing as expeditiously as we can, consistent with the safeguard that the administration has in place for that type of effort we will have complete testing. From there, to say we want to set an artificial time when it going to be rolled out circumvents and cuts short the evaluation phase so I think all we should look at right now is when we are going to move to testing, we're going to do it as soon as we can get there and have safeguards for data that might be transferred.

Q: The draft report noted a couple of problems with CAPPS II one is that you can't ensure the accuracy of the data that is provided by commercial providers and it's that you're thinking about an alert list and I was wondering if you can comment on that. The other problem was identity theft, the report says that this system doesn't protect against identity theft and some sort of biometric add-on might be needed.

Hutchinson: And the first one was....

Q: The alert list. That could be used if you had a name that was commonly confused with somebody who was on a watch list, and then you would go for a background check.

Hutchinson: On the alert list, I'll take it from a couple of different standpoints here. One, as I mentioned, the no fly list that's utilized now is very limited. And so this type of system will give the capability of checking names that we have some confidence in its identity with a broader watch list from a government standpoint. So it gives us a better safety factor for passengers because of that ability. And then on the identity fraud or theft side, that's a real problem. I mean right now you can have somebody go through there that has stolen your identity and we don't have any capability of recognizing that. With this system we will be able to give a score to the likelihood that this identity is an accurate identity. And if someone has stolen your identity, most likely the system will catch that. So citizens will have a better capability, really a unique capability, of identifying those who might have stolen your identity and tried to use that identity. So there's some protections in there. So the other side

of it would be if you are somehow caught going through there because someone has stolen your identity and it raises questions about you, and gives you a lower score on your identity confirmation, and that's one of the things we need to test effectively. I think our system will be such that we can sort through that in an effective way, that it will detect the identity fraud side, but not adversely impact the citizen that goes through the system that's had their identity stolen. And that's what we will be testing.

Q: Are you considering biometrics?

Hutchinson: No. Not in the short term in this system.

Q: Can you talk about the flights that have been canceled for this weekend? Were those two flights and two dates in the last batch of intelligence that you got that accounted for the cancellations two weekends ago? That's one thing. And I also wanted to ask you about the Dominicans that came in the crate in Miami. Do you know what I'm talking about? How often is that happening?

Hutchinson: Would you accept an answer of 'not often'? (Laughter) This is the British Airways 223 flight that we've been notified that the British government expects to cancel that flight that is coming up. This is a decision that they reached. We worked very closely in sharing intelligence both ways, and that's the decision that they made. I would not comment as to whether the intelligence that they acted on was intelligence that previously exists or whether it's new intelligence, I wouldn't comment on that. The British government might comment more as to the reason for their decision to cancel that flight.

Question: And the Riyadh flight.

Hutchinson: That's a comment that they'll....

Q: But you all have told us before about batches of intelligence and the reasons for flights being cancelled – naming certain dates and flight numbers, but you won't tell us if these flights were part of that last batch?

Hutchinson: That's correct. And I think it's important that the British Government who made the assessment and made the judgment to cancel the flight, ought to comment on the reason that.

Q: Are you suggesting that it was their intelligence, nothing to do with ours?

Hutchinson: No. I'm suggesting that we share intelligence. There's a common evaluation. I'm very pleased that there's been a joint effort to evaluate the intelligence and arrive at joint assessments of that intelligence. We work very closely with them. One, I wouldn't comment on the intelligence stream, and secondly, that's something they should comment on, as to their reasons for canceling that flight.

Q: What about the crate situation?

H: I think that is rare obviously, extraordinarily dangerous and this is an example of where there was some inside effort to accommodate the placement of individuals in a crate. That's why you have to make sure that there is an access control to secure areas such as the airports as well as in other cargo shipments so anytime you have a system in place for protection you're going to always have potential for corruption or for inappropriate conduct and I think that's what happened here. I believe it's certainly the exception.

Q: Did I understand you correctly that CAPPs II may help people who are the victims of identity theft? How would that work? Say someone who has become Matthew Wald by taking my credit card- how would I catch that person?

Hutchinson: We would catch him- you wouldn't catch him. They can go through there using your identity as a passenger on a flight and they're going to come up as a question mark there.

Q: So you'll secondarily screen this person- but you won't arrest him?

Hutchinson: Well, it all depends on the information that comes up. For example, if they used your identity but gave a different set of information or something that was out of line with your identity in the publicly available information on you the system would very well catch that incongruity there and raise the level- it could be referred to secondary or it could come up to the level of identity theft. This is something that has to be tested. I am thinking purely of how it may work in that regard but I think the whole idea is to give a level of confidence on individual identity.

Q: There was a previous discussion about whether airport security would be used for prosecution of other crimes and I believe that the Department has said for only violent crimes?

Hutchinson: For a violent crime for which there is an outstanding warrant.

Q: So suppose my identity has been stolen and somebody using my name buys a ticket and you finger this person and you say he's run up thousands of dollars in credit card bills and done other nasty things- that's not violent crime. Would you then arrest him?

Hutchinson: No. If there is not an outstanding warrant for violent crime you wouldn't be arrested. Now if there is a hit on a terrorist watch list it will be referred to law enforcement.

Q: But people steal identities who are not terrorists?

Hutchinson: It could be just referred to secondary inspection. It might raise enough concern that there isn't an arrest there but there could be a further review based on the level of information that comes out as indicated as a threat. This is an example of what has to be tested- I would emphasize to you.

Q: If testing can't begin until you have the PNR data from the airlines and most of the airlines aren't cooperating and the two options that you have are rule-making and a security directive. So what would be involved in a security directive?

Hutchinson: Security directive does not have to go through the same rule-making process. We could issue those within our own authority for the security of the airlines. We do that fairly routinely. They are not publicly discussed but there are security directives and I'm not trying to narrow our options just to that. But that does not take the same type of rule-making- that's one of the reasons though we want to make sure that there is an opportunity for other public comment. We're not trying to foreclose that but as one means by which we would not delayed unduly in receiving the data.

Q: Quickly- does GAO have to look at this again. I was looking at the legislation that says they are not going to give any money or support to the program until Congress is satisfied about blah, blah, blah. Does that mean GAO has to go back again?

Hutchinson: That's a decision that Congress would have to answer. From our standpoint, those questions have to be answered. Now Congress could independently determine that- it could be by report from us or they might say we need another GAO review. I don't how that would work out. Thank you very much.

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